

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL HOSKINSON-SHORT,
KASSANDRA MCKOWN, PATRICK
SOTO, MICHAEL J. HAUSER,
DOROTHY E. HAUSER, JULIO VERA,
BRENDY WOLFRAM, ERNESTO DE
LA FE, TIMOTHY M. HAYDEN,
NECROTIZING FASCIITIS
FOUNDATION, LINDSAY WELCH, and
JUAN HERNANDEZ, individually and on
behalf of those similarly situated,

Plaintiffs,

VS.

CAPITAL ONE FINANCIAL
CORPORATION, CAPITAL ONE, N.A.,
CAPITAL ONE BANK (USA), N.A.,
AMAZON.COM, INC., and AMAZON
WEB SERVICES, INC.,

Defendants.

STIPULATION

Pursuant to LCR 7(d)(1) and LCR 10(g), the parties hereby request that the Court stay all proceedings and deadlines in this action pending resolution of the motions for transfer and consolidation under 28 U.S.C. § 1407 that are currently pending before the Judicial Panel on Multidistrict Litigation (“JPML”). The JPML will hear oral argument on the Section 1407 motions

1 on September 26, 2019, and Defendants Capital One Financial Corporation, Capital One, N.A.,
2 and Capital One Bank (USA), N.A. (collectively, “Capital One”) and Defendants Amazon.com,
3 Inc. and Amazon Web Services, Inc. (collectively, “Amazon”) anticipate an order regarding
4 transfer and consolidation of this case and other related cases to be issued shortly thereafter.
5 Plaintiffs agree to the requested stay.

6 This case is one of over 50 putative class actions filed in connection with the cyber incident
7 that Capital One announced on July 29, 2019. On July 31, 2019, plaintiffs in a related case pending
8 in this District, *Fadullon v. Capital One Financial Corporation, et al.*, Case No. 2:19-cv-01189
9 (W.D. Wash., filed July 30, 2019), filed a motion for consolidation and transfer under 28 U.S.C.
10 § 1407 with the JPML in *In re Capital One Consumer Data Breach Litigation*, MDL No. 2915
11 (J.P.M.L. July 31, 2019) (“*In re Capital One*”). *See In re Capital One*, Dkt. No. 1. That motion
12 seeks to have related actions arising out of the Capital One cyber incident consolidated with the
13 *Fadullon* case and transferred to this District for pretrial proceedings. Subsequently, numerous
14 plaintiffs in other related cases have filed briefs in the *In re Capital One* matter supporting transfer
15 and consolidation, but seeking other transferee courts, including the Eastern District of Virginia,
16 the District for the District of Columbia, and the Northern District of California. Numerous notices
17 of related actions have also been filed in *In re Capital One*, and additional related cases continue
18 to be filed and are in the process of being noticed to the JPML as potential tag-along actions.

19 Given that over 50 putative class actions have been filed, all related to the same underlying
20 event and asserting the same or substantially similar factual allegations, the JPML is highly likely
21 to grant the motions for transfer and consolidation. If it does, to conserve the parties’ resources
22 and promote judicial economy, this case will be consolidated with the other putative class actions
23 for centralized pretrial proceedings in a single transferee court. Under these circumstances,
24 “[c]ourts frequently grant stays pending a decision by the MDL Panel regarding whether to transfer
25 a case.” *Good v. Prudential Ins. Co. of Am.*, 5 F.Supp.2d 804, 809 (N.D. Cal. 1998); *see Short v.*
26 *Hyundai Motor Am. Inc.*, No. C19-0318JLR, 2019 WL 3067251 (W.D. Wash. July 12, 2019)

1 (granting stay pending JPML's resolution of Section 1407 motion); *Gonzalez v. Merck & Co.*, No.
2 CV-07-3034-LRS, 2007 WL 2220286, at *2 (E.D. Wash. Aug. 2, 2007) (granting defendant's
3 motion to stay pending transfer decision and noting that "well settled case law . . . dictates a stay
4 should be granted to promote judicial economy"); *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358,
5 1362 (C.D. Cal. 1997) (granting stay pending JPML's ruling because "a majority of courts have
6 concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to
7 transfer and consolidate is pending with the MDL Panel"); *Bonefant v. R.J. Reynolds Tobacco Co.*,
8 No. 07-60301-CIV, 2007 WL 2409980, at * 1 (S.D. Fla. July 31, 2007) ("[I]t is common practice
9 for courts to stay an action pending a transfer decision by the JPML."). In fact, Capital One has
10 already successfully moved to stay over 30 cases related to the cyber incident. *See, e.g., Ouellette*
11 *v. Capital One Fin. Corp.*, 2:19-cv-01203-MAT, Dkt. No. 32 (W.D. Wash. Aug. 29, 2019) (order
12 staying related case pending decision from the JPML); *Desoer v. Capital One Fin. Corp.*, 2:19-
13 cv-01223-MLP, Dkt. No. 19 (W.D. Wash. Aug. 29, 2019) (same); *Hilker v. Capital One Fin.*
14 *Corp.*, No. 1:19-cv-995-RDA-JFA, Dkt. No. 15 (E.D. Va. Aug. 16, 2019) (same); *Francis v.*
15 *Capital One Fin. Corp.*, No. 8:19-cv-1898 (M.D. Fla. Aug. 21, 2019), Dkt. No. 11 (same); *Berger*
16 *v. Capital One Fin. Corp.*, No. 1:19-cv-2298 (D.D.C. Aug. 22, 2019) (same); *Heath v. Capital*
17 *One Fin. Corp.*, 3:19-cv-555-JAG, Dkt. No. 14 (E.D. Va. Aug. 16, 2019) (order staying nine
18 related cases pending decision from the JPML). Motions to stay are currently pending in other
19 cases, and Capital One—along with AWS in the cases where it is named as a defendant—will
20 continue to seek stays in additional related cases.

21 Here, too, a short stay of proceedings until the JPML resolves the pending Section 1407
22 motions will promote judicial economy and sound judicial administration, avoid duplicative
23 pretrial proceedings and potentially inconsistent pretrial rulings, and prevent prejudice to all
24 parties.

25 IT IS SO STIPULATED.

26 DATED this 5th day of September, 2019.

1 Respectfully submitted,

2 s/Steven A. Miller

3 Steven A. Miller, WSBA No. 30388

4 s/Daniel J. Oates

5 Daniel J. Oates, WSBA No. 39334

6 s/Kellen A. Hade

7 Kellen A. Hade, WSBA No. 44535

8 MILLER NASH GRAHAM & DUNN LLP

9 Pier 70, 2801 Alaskan Way, Suite 300

Seattle, WA 98121-1128

Tel: (206) 624-8300

Fax: (206) 340-9599

Email: steve.miller@millernash.com

dan.oates@millernash.com

kellen.hade@millernash.com

10 *Attorneys for Capital One Financial
11 Corporation, Capital One, N.A., and Capital
12 One Bank (USA), N.A.*

13 Stipulation agreed to by:

14 s/ Jeffrey A. Ware

15 Jeffrey A. Ware, WSBA No. 43779

16 FENWICK & WEST LLP

17 1191 Second Avenue, 10th Floor

Seattle, WA 98101

Tel: (206) 389-4510

Fax: (206) 389-4511

Email: jware@fenwick.com

18 *Attorneys for Amazon.com, Inc. and Amazon Web
19 Services, Inc.*

20 /s Roger M. Townsend

21 Roger M. Townsend, WSBA #25525

22 Breskin Johnson & Townsend PLLC

1000 Second Avenue, Suite 3670

Seattle, WA 98104

Tel: (206) 652-8660

Fax: (206) 652-8290

rtownsend@bjtlegal.com

23 Joshua H. Grabar

24 Grabar Law Office

1735 Market Street, Suite 3750

Philadelphia, PA 19103

1 Tel.: 267-507-6085
2 Fax.: 267-507-6048
3 Email: jgrabar@grabarlaw.com

4 Marc H. Edelson
5 Edelson & Associates, LLC
6 3 Terry Drive, Suite 205
7 Newtown, PA 18940
8 Tel: (215) 867-2399
9 Fax: (267) 685-0676
10 Email: medelson@edelson-law.com

11 *Attorneys for Plaintiffs*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

IT IS ORDERED this 6th day of September 2019.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE